

09/25/2008

Application No. 10/766,505
Submission After Notice of Appeal dated September 22, 2008
Notice of Appeal filed September 11, 2008

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Serial No.: 10/766,505
Filed: January 28, 2004
Applicant: Jozef Brcka
Art Unit: 1792
Examiner: Maureen Gramaglia Arancibia
Title: COMPACT, DISTRIBUTED INDUCTIVE ELEMENT FOR LARGE
SCALE INDUCTIVELY-COUPLED PLASMA SOURCES
Attorney Docket: TAZ-246

VIA ELECTRONIC FILING

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SUBMISSION AFTER NOTICE OF APPEAL

This Response is submitted pursuant to 37 CFR 41.33 and MPEP § 1206 requesting reconsideration of the Final Rejection dated April 11, 2008, in light of the Declaration of Jozef Brcka, Ph.D., filed September 11, 2008, on the same date as the Notice of Appeal.

REMARKS

Applicant thanks the Examiner for the courtesy of the telephone call of September 19, 2008, informing Applicant's counsel that the Declaration of Jozef Brcka, which was filed on September 11, 2008 prior to the filing of the Notice of Appeal but on the same day as the Notice of Appeal, would be considered as filed "with" the Notice of Appeal for purposes of the Pre-Appeal Brief Request for Review, and thus would not qualify for consideration by that procedure. The Examiner suggested that the Declaration on the capability of or inherency in the *Hama* reference could be considered as evidence filed with or after the Notice of Appeal pursuant to the procedure therefore. Accordingly,

this further Response to the Final Rejection is submitted requesting consideration of the Brcka Declaration.

Reasons Why the Evidence Was Not Filed Earlier

This application has proceeded through several actions by the Examiner and amendments by Applicant, including an RCE, from initial issues on how to claim complex antenna geometry to issues on the giving of proper weight to claim language dealing with the function and capabilities of Applicant's claimed structure as compared with those of the references. When Applicant responded to the Final Rejection by arguing that improper weight was being given to language in the claims, the Examiner issued a detailed Advisory Action setting forth her cogent technical reasoning explaining in detail her interpretation of the capabilities of the *Hama* reference and how she thought it would function. This reasoning revealed that the technical complexities of how the device shown in the *Hama* reference would operate in the context of Applicant's invention were not readily apparent to the Examiner from the face of the *Hama* patent, and that it was the technical analysis and not the failure to give weight to claim language that apparently led the Examiner to what Applicant believed to be an erroneous view of the inherent behavior and capabilities of the device in the *Hama* reference. Applicant concluded from the Examiner's complete statement of her reasoning in the Advisory Action that sophisticated and specialized computational tools, which the Examiner did not have, were required to express the performance of the device in the *Hama* reference in form that could be compared to Applicant's invention. The Declaration of Jozef Brcka, Ph.D., filed on September 11, 2008, describes results of a simulation of the *Hama* device with simulation software such as that by which Applicant performed the analysis of the embodiments of his invention that are described in the present patent application.

The Declaration of Jozef Brcka, Ph.D., Overcomes All Rejections Under Appeal

All of the claims in the Application (claims 34-47) have been rejected under 35 U.S.C. §102(b) as being anticipated by the *Hama* reference (U.S. Patent No. 6,089,182 to *Hama*), based on the same interpretation of it, namely, that the inductor of *Hama* would be structurally capable of performing the specified function ..." claimed by Applicant.

The Declaration of Jozef Brcka, Ph.D., presents simulations of the *Hama* reference to show that the interpretation of the reference that is the basis for the rejection is scientifically incorrect. (See Declaration of Jozef Brcka, Ph.D., filed Sept. 11, 2008.)

Applicant's claimed function is neither taught by *Hama* nor is it inherent in the *Hama* inductor. Accordingly, the art relied upon by the Examiner in making the final rejection omits an essential element required for a rejection under 35 U.S.C. § 102(b).

Applicant has outlined his argument regarding the rejections on appeal, in light of the Declaration, in a Pre-Appeal Brief Request for Review that was filed on September 11, 2008, to which the Examiner is referred.

It is submitted that the Declaration of Jozef Brcka demonstrates that the rejection of all of the claims under 35 U.S.C. § 102(b) is improper. Accordingly, it is respectfully requested that Final Rejection be withdrawn and the application be allowed.

Applicant is of the opinion that no additional fee is due as a result of this submission. If any charges or credits are necessary to complete this communication, please apply them to Deposit Account No. 23-3000.

Respectfully submitted,

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